

Notice of Allowability

Application No.

09/443,456

Examiner

Erica E Cadugan

Applicant(s)

WEGENER ET AL.

Art Unit

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 2/11/2004.
2. ☒ The allowed claim(s) is/are 19-22, 24 and 26.
3. ☒ The drawings filed on 19 November 1999 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.


THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Erica E Cadugan
Primary Examiner
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EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Claim 9 has been canceled.

Claim 12 has been canceled.

In claim 24, line 4, "arranges" has been changed to --arranged--.

2. The following is an examiner's statement of reasons for allowance: claims 19-22 were previously allowed. The board did not affirm Examiner's rejection of claims 24 and 26, and both claims 24 and 26 were properly rewritten in independent form to include all limitations of the base claim and any intervening claim as was required by the "Response after BPAI Decision" mailed 1/16/2004.

Regarding the above cancellation of claims 9 and 12, it is noted that prosecution in this case is closed, and that entry of an amendment to the claims when prosecution is closed is not a matter of right. In the instant case, neither of claims 9 and 12 as set forth in the amendment of 2/11/2004 constitute the previous claims 9 and 12 rewritten in independent form "including all of the limitation of the base claims and any intervening claims" as required by the "Response after BPAI Decision" mailed 1/16/2004.

Furthermore, both claims 9 and 12 as set forth in the amendment of 2/11/2004 are broader than the previous claims 9 and 12, which broader combination of limitations have not

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been previously considered, and as such, the amendment to claims 9 and 12 set forth in the amendment of 2/11/04 would create a new issue that would require at least further consideration and that would possibly require further search.

In any event, as indicated in the "Response after BPAI Decision" mailed 1/16/2004, since the requirement to present claims 9, 11-16, 24, and 26 in independent form "including all of the limitations of the base claim and any intervening claims" was not fully complied with, claims 9 and 12 are being canceled as previously indicated (1/16/2004).

The amendment to claim 24 was for the purpose of correcting an obvious typographical error.

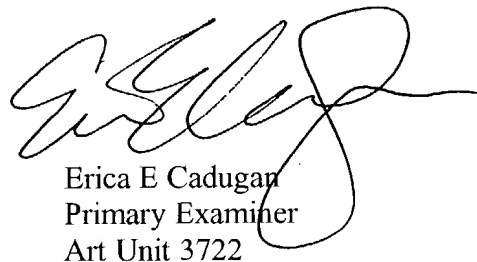
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erica E Cadugan whose telephone number is (703) 308-6395. The examiner can normally be reached on M-F, 7:30 a.m. to 5:00 p.m., alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrea L. Wellington can be reached on (703) 308-2159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Erica E Cadugan
Primary Examiner
Art Unit 3722

eec
March 9, 2004